

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE MCNEAL,

Plaintiff,

No. CIV S-05-0441GEB EFB P

vs.

EVERT, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

On November 15, 2006, the court ordered the United States Marshal to serve the instant complaint on defendants. On January 25, 2007, process directed to defendant M. Bitle was returned unserved with the notation “ no M. Bitle at High Desert State Prison.” On April 10, 2007, the court directed plaintiff to provide additional information to serve defendant Bitle within 90 days. On April 3, 2007, process directed to defendant Evert was returned unserved with the notations “ Ret’d unex. no empl. @ HDSP, 2/15/07 mailed to new inst., 4/2/07 Military leave, Address unknown.” On May 22, 2007, the court directed plaintiff to provide additional information to serve defendant Evert within 90 days.

The 90 day period given by both the court’s April 10 and May 22, 2007, orders has passed and plaintiff has not returned the USM-285 form necessary to effect service on defendants Bitle or Evert or otherwise responded to the court’s order.

1 Accordingly, it is hereby RECOMMENDED that defendants Bitle and Evert be  
2 dismissed without prejudice.

3 These findings and recommendations are submitted to the United States District Judge  
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days  
5 after being served with these findings and recommendations, any party may file written  
6 objections with the court and serve a copy on all parties. Such a document should be captioned  
7 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
8 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: September 24, 2007.

11   
12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26